



IRF25/90

## Gateway determination report – PP-2024-134

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Permit a dwelling house with consent at 32 Grays  
Lane, Tyagarah (Lot 1 DP 258921)

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# Acknowledgment of Country

The Department of Planning, Housing and Infrastructure acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

## Contents

<b>1</b>	<b>Planning proposal .....</b>	<b>1</b>
1.1	Overview .....	1
1.2	Objectives of planning proposal .....	1
1.3	Explanation of provisions .....	1
1.4	Site description and surrounding area.....	2
1.5	Mapping.....	7
<b>2</b>	<b>Need for the planning proposal.....</b>	<b>7</b>
2.1	North Coast Regional Plan 2041 .....	7
2.2	Local Plan.....	8
2.3	Section 9.1 Ministerial Directions .....	9
2.4	State environmental planning policies (SEPPs) .....	11
	<b>The planning proposal is consistent with the provisions of the relevant SEPPs.....</b>	<b>11</b>
<b>3</b>	<b>Site-specific assessment .....</b>	<b>11</b>
3.1	Environmental .....	11
3.2	Social and economic .....	11
3.3	Infrastructure .....	11
<b>4</b>	<b>Consultation.....</b>	<b>11</b>
4.1	Community .....	11
4.2	Agencies.....	11
<b>5</b>	<b>Timeframe.....</b>	<b>12</b>
<b>6</b>	<b>Local plan-making authority .....</b>	<b>12</b>
<b>7</b>	<b>Recommendation.....</b>	<b>12</b>

**Table 1 Reports and plans supporting the proposal**

Relevant reports and plans
AHIMS search
Bushfire Assessment
Driveway and Access Assessment
Preliminary Site Investigation – Contaminated Land
Flood Assessment
Onsite Sewerage Management Design Report

# 1 Planning proposal

## 1.1 Overview

**Table 2 Planning proposal details**

<b>LGA</b>	<b>Byron</b>
<b>PPA</b>	Byron Shire Council
<b>NAME</b>	Permit a dwelling house with consent on Lot 1 DP 258921 32 Grays Lane, Tyagarah
<b>NUMBER</b>	PP-2024-134
<b>LEP TO BE AMENDED</b>	Byron Local Environmental Plan 2014
<b>ADDRESS</b>	32 Grays Lane Tyagarah 2481 (Lot 1 DP 258921)
<b>DESCRIPTION</b>	Permit a dwelling house on Lot 1 DP 258921 by amending Part 6 of Byron LEP 2014 to include an additional local provision.
<b>RECEIVED</b>	17/12/2024
<b>FILE NO.</b>	IRF25/90
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose, and a political donation disclosure is not required
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal

## 1.2 Objectives of planning proposal

The objective of the planning proposal is to permit a dwelling on Lot 1 DP 258921 (as the land has no current dwelling entitlement and the landowner is seeking to commence a process to potentially legalise one of the unauthorised dwellings that has been constructed on the site).

The proposal includes objectives which clearly and adequately explain the intent of the planning proposal.

## 1.3 Explanation of provisions

The intended outcome of the proposed LEP amendment is to be achieved through an additional local provision in Part 6 of Byron LEP 2014 to permit a dwelling on Lot 1 DP 258921 with development consent.

The planning proposal contains an explanation of provisions which adequately explains how the objectives will be achieved.

## 1.4 Site description and surrounding area

The site is zoned RU2 Rural Landscape with an area of 4.207 hectares (Figure 1) and has an unapproved dual occupancy (detached) located on the eastern boundary. There are three man-made dams in close proximity to the two existing dwellings with vegetation surrounding and trees scattered over the site. The site adjoins the Pacific Motorway to the west, a railway corridor to the south, the Gondwana Sanctuary community title subdivision to the east, and a plant nursery and landscaping material supplier to the north (Figure 2).



Figure 1: Current Land Zoning Map (source: NSW Spatial Viewer)



Figure 2: Aerial of the subject site (source: Nearmap)



Byron Bay is approximately 11.5km south, with the site being approximately 8.3km from Byron Central Hospital, approximately 10.4km from Byron Bay Sports and Cultural Complex, 14.2km from Aldi, 15.3km from Woolworths Byron Bay, and 14.3km from Main Beach.

Similarly, the subject site is approximately 8.4km north-west from Woolworths Mullumbimby, approximately 8.2km from Mullumbimby train station, 8km from Mullumbimby Public School and 9.7km from Mullumbimby High School (Figure 3).

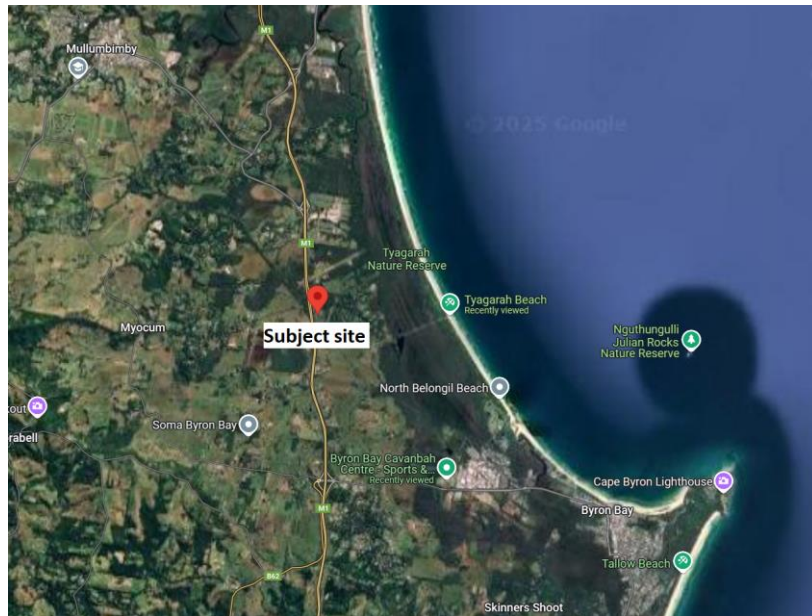


Figure 3: Subject site in the context of the surrounding area (source: Google maps)

The site is mapped as containing a small area of potential high environmental vegetation (HEV). This vegetation is located over 40 m from the existing dwellings (Figure 4). Council advises that the vegetation consists of coastal swamp forest and North Coast wet sclerophyll forest. The site is bushfire prone consisting of vegetation category 2 (Figure 5).

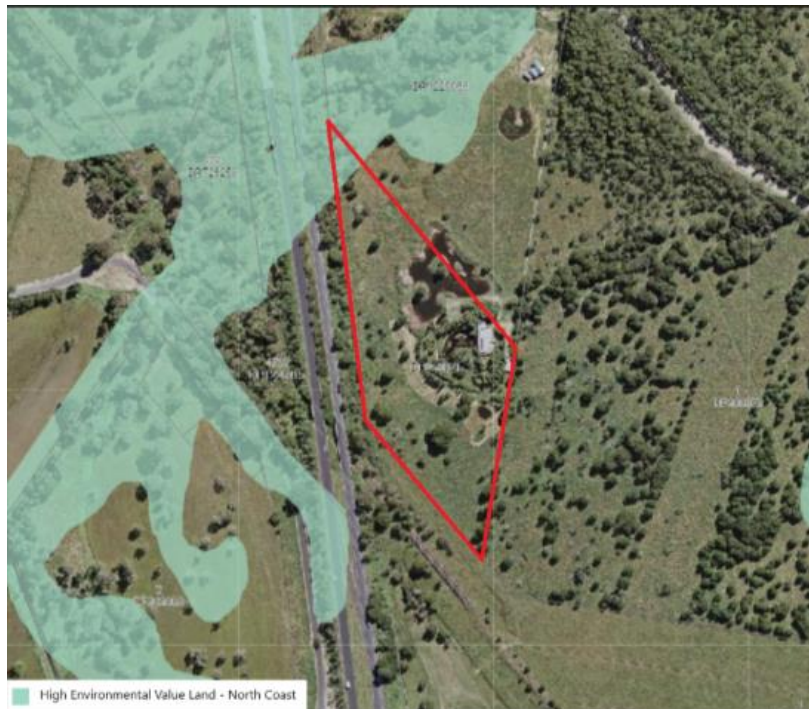


Figure 4: HEV Map (source: Northern Region Viewer)

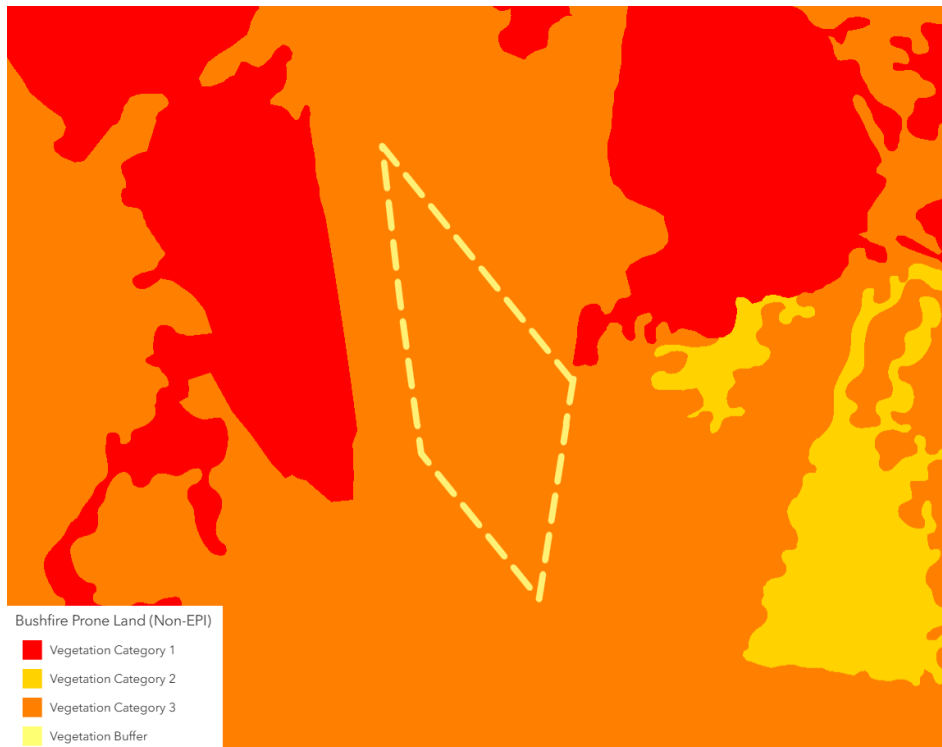


Figure 5: Bushfire Prone Land (source: NSW Spatial Viewer)

The site contains class 3 acid sulfate soils (Figure 6).



Figure 6: Acid Sulfate Soils Map (source: NSW Spatial Viewer)



The entire site is flood prone and is located below the flood planning level. Indicative flood depths under a 1% AEP event are shown in Figure 7.

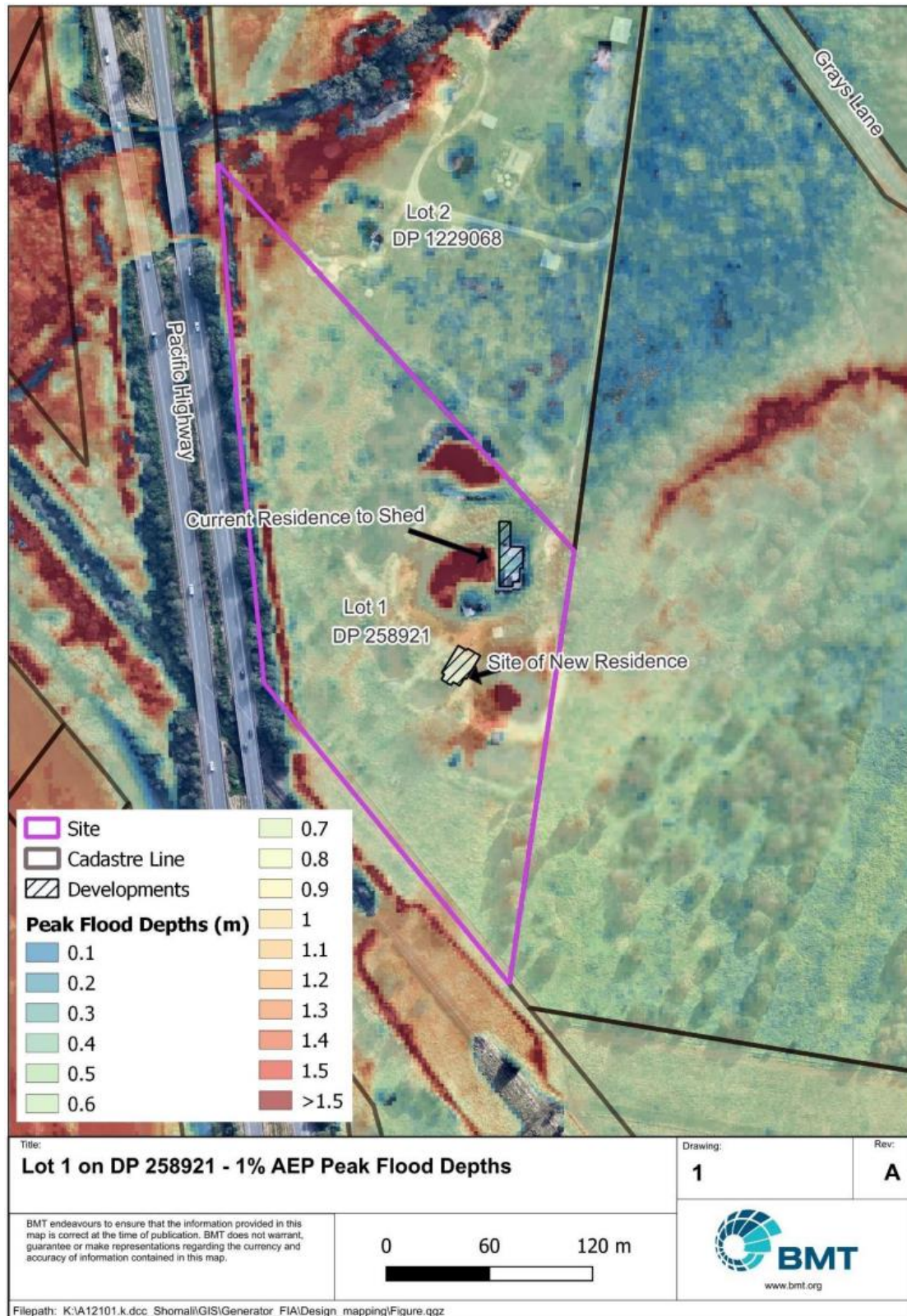


Figure 8: 1% AEP Peak Flood Depths for subject site (source: BMT Commercial)



The site is mapped as being important farmland (Figure 8) and in the coastal strip (Figure 9) in the North Coast Regional Plan 2041.



Figure 8: Far North Coast Farmland (source: Northern Region Viewer)

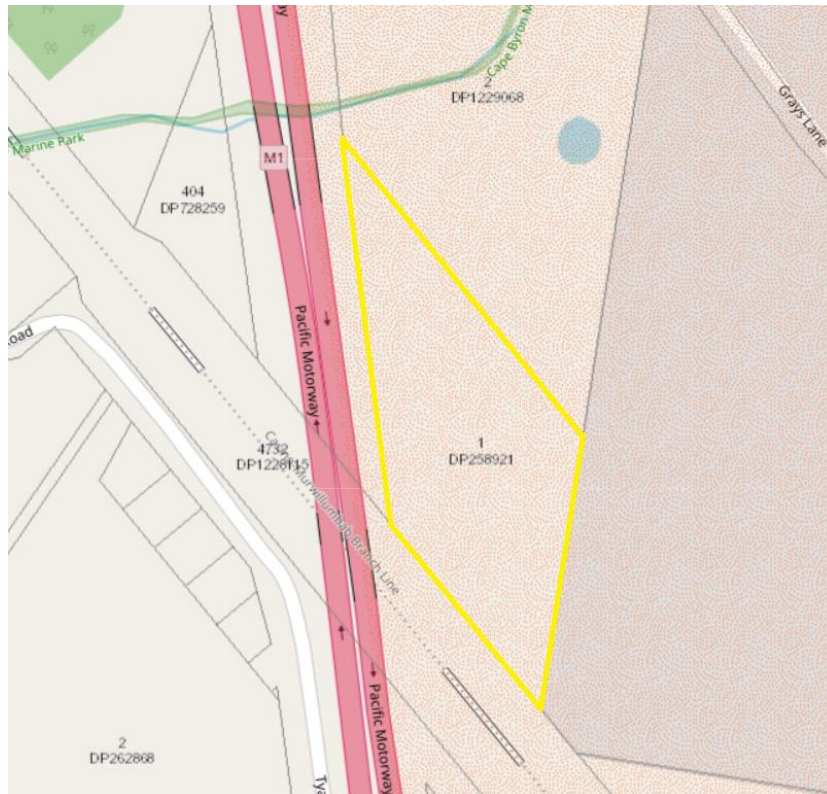


Figure 9: North Coast Regional Plan 2041 coastal strip marked (source: Northern Region Viewer)

## 1.5 Mapping

No LEP mapping amendments are required and suitable maps identifying the site for agency and community consultation are included within the proposal.

## 2 Need for the planning proposal

The planning proposal is not the result of a strategy and study and has been initiated by the landowner to commence a process to potentially legalise one of unauthorised dwellings that has been constructed on the site

The *Byron Shire Rural Land Use Strategy 2017* and Council's *Unauthorised Dwellings Guidelines 2022* provide that a planning proposal may be initiated to facilitate approval of an unauthorised dwelling constructed prior to 2020.

The planning proposal is considered the best means of facilitating a process so that development consent for a dwelling house on the site may be pursued.

### 2.1 North Coast Regional Plan 2041

**Table 3: North Coast Regional Plan 2041 assessment**

NCRP 2041 Strategy	Justification
Strategy 1.5 New rural residential housing is to be located on land which has been approved in a strategy endorsed by the Department of Planning and Environment and is to be directed away from the coastal strip.	The site is in the coastal strip and is not on land that has been identified for housing in a local strategy approved by the Department. However, due to the small size of the site, lack of significant environmental characteristics or agricultural capability (with incorporation into a larger agricultural holding not possible due to the adjoining land uses - Pacific Motorway, rail corridor, plant nursery /landscaping supplier and the Gondwana Sanctuary community title development) it's use for a residential dwelling appears to be reasonable in terms of not having any likely adverse environmental or agricultural impact. The planning proposal's inconsistency with this strategy is of minor significance.
Strategy 3.1 Strategic planning and local plans must consider opportunities to protect biodiversity values by:  Focusing land-use intensification away from HEV assets and implementing the 'avoid, minimise and offset' hierarchy in strategic plans, LEPs and planning proposals.	Potential HEV mapped land is located in the north-west corner of the lot approximately 50 metres from the unauthorised dwellings and is unlikely to be adversely affected. This land in the north west corner of the site is also identified on the NSW Biodiversity Values Map

NCRP 2041 Strategy	Justification
<p>5.3 Use local strategic planning and local plans to adapt to climate change and reduce exposure to natural hazards by:</p> <ul style="list-style-type: none"> <li>- locating development away from areas of known high bushfire risk, flood and coastal hazard areas to reduce the community's exposure to natural hazards.</li> </ul>	<p>The entire site is mapped as being affected by the 1% AEP flood and the access roads as being inundated in a 5% AEP flood.</p> <p>While the proposal argues that this is satisfactory subject to an evacuation plan as the current floor level of the dwelling is 5.02m AHD which is above Council's required flood planning level of 4.7m AHD for the site (1%AEP of 3.8m plus 0.4m sea level rise plus 0.5m freeboard), the proposal does not consider the PMF, hazard levels, or inundation times.</p> <p>Further information about these risks needs to be addressed particularly in terms of the evacuation plan and if shelter-in-place is to be considered. Requiring this information is also consistent with Council's resolution to require additional flooding information should a Gateway determination to proceed be obtained. Consultation with SES and DCCEEW is recommended.</p> <p>The site is also identified as being bushfire prone and a bushfire assessment has been prepared to support the proposal. Consultation with NSW RFS is recommended.</p> <p>Until this information and consultation has occurred the consistency with this strategy remains unresolved.</p>
<p>8.1 Local planning should protect and maintain agricultural productive capacity in the region by directing urban, rural residential and other incompatible development away from important farmland.</p>	<p>The planning proposal would enable a dwelling house on a site mapped as important farmland. However as discussed above, the proposal is considered unlikely to have any adverse impact on agriculture.</p>

## 2.2 Local Plan

**Table 4: Local strategy assessment**

Local strategies	Justification
Byron Shire Local Strategic Planning Statement (LSPS) 2020	The proposal is consistent with land use priority 3 to support housing diversity and affordability with housing growth in the right locations. The planning proposal provides Council an opportunity to consider and legalise an unauthorised dwelling, thereby achieving this planning priority.
Byron Shire Rural Land Use Strategy 2017	Council's Rural Land Use Strategy was endorsed by the Department in 2018. Strategy Action No. 22 recommends exploring a strategic framework to resolve dwelling entitlement issues and a guideline has since been prepared by Council to establish planning pathways for unauthorised dwellings to be legalised. The planning proposal is consistent with the strategy and guideline.

Local strategies	Justification
Byron Shire Community Strategic Plan (CSP) 2032	The planning proposal is not inconsistent with objective 4: Ethical Growth: We manage growth and change responsibly, and strategy 4.2: Enable housing diversity and support people experiencing housing insecurity of Council's CSP.

## 2.3 Section 9.1 Ministerial Directions

The proposal is considered consistent with relevant section 9.1 Direction except as discussed below:

**Table 5: 9.1 Ministerial Direction assessment**

Directions	Consistency	Reasons for Inconsistency
1.1 Implementation of Regional Plans	Unresolved	The proposal is inconsistent with this direction and the NCRP 2041 as discussed above. Until further flood information and consultation with agencies is undertaken to confirm the proposal is satisfactory, the inconsistency with this direction remains unresolved.
3.1 Conservation Zones	Unresolved	The proposal is inconsistent with this direction as it does not include provisions to facilitate the protection and conservation of environmentally sensitive land identified in the north west corner of the site. While it not expected that the proposal will have any adverse impact on this environmentally sensitive land, consistency with this direction remains unresolved until consultation with DCCEEW is undertaken.
3.2 Heritage Conservation	Unresolved	The proposal is inconsistent with this direction as it does not contain provisions to facilitate heritage conservation. Until consultation with the Arakwal Corporation and Tweed Byron Local Aboriginal Land Council is undertaken to confirm the heritage significance of the land, consistency with the direction remains unresolved.



Directions	Consistency	Reasons for Inconsistency
4.1 Flooding	Unresolved	<p>The proposal is inconsistent with this direction as it will allow an intensification of development on a site that is mapped as being affected by the 1% AEP flood and the proposal does not include provisions that give effect to the NSW Flood Prone Land Policy, the principles of the Floodplain Development Manual 2005, the Considering Flooding in Land Use Planning Guidelines 2021, or any adopted flood study and/or floodplain risk management plan.</p> <p>As discussed above, until further information regarding the PMF, hazard levels, inundation time and potential alignment with the Department's recently released Shelter-in-Place guideline for flash floods is provided, and consultation with DCCEE and SES is undertaken, consistency with the direction remains unresolved.</p>
4.2 Coastal Management	Unresolved	<p>The proposal is inconsistent with this direction as the land is located within the coastal environment and use areas and does not include provisions that are consistent with requirements of the direction and is not supported by a completed checklist as required by the NSW Coastal Design Guidelines 2023. Until this checklist is completed and reviewed, consistency with this direction remains unresolved.</p>
4.3 Planning for Bushfire Protection	Unresolved	<p>The proposal is inconsistent with this direction as the land is mapped as being bushfire prone land and consultation as required by the direction with the NSW RFS has not yet been undertaken. Until this consultation is completed, consistency with this direction remains unresolved.</p>
4.5 Acid Sulfate Soils	Justified	<p>The planning proposal is inconsistent with this direction as the land is identified as Class 3 Acid Sulfate Soils and is not supported by an acid sulfate soils study. This inconsistency is considered to be of minor significance as the dwelling has already been constructed and the LEP already contains provisions that can adequately consider and address this matter at the development application stage.</p>
9.2 Rural Lands	Justified	<p>The planning proposal is inconsistent with this direction as it will affect land within an existing rural zone and does not comply with all of the direction requirements such as supporting farmers in exercising their right to farm. The inconsistency is considered to be of minor significance as the land has extremely limited existing or potential use for agriculture (despite its identification as containing regionally significant farmland) due to its small size and the surrounding land uses.</p>

## 2.4 State environmental planning policies (SEPPs)

The planning proposal is consistent with the provisions of the relevant SEPPs.

## 3 Site-specific assessment

### 3.1 Environmental

**Table 6: Environmental impact assessment**

Environmental Impact	Assessment
Flooding	As discussed above the entire site is mapped as being affected by the 1% AEP flood and the access roads as being inundated in a 5% AEP flood.  Further information regarding the PMF, hazard levels, and inundation times is required, along with consultation with the SES and DCCEEW, before it can be determined whether the proposal is satisfactory in regard to flooding issues.
On-site Waste Water Disposal	An on-site waste water disposal assessment has been prepared for the site confirming that the land can accommodate a suitable disposal system.
Contamination	A Preliminary Site Investigation has been undertaken that has determined that the site is suitable for the intended residential use.

### 3.2 Social and economic

The proposal will have minimal adverse social or economic impacts if it is determined that a dwelling can be considered with consent on the land. If it is however determined that the land is not suitable for a dwelling, this could have significant social and economic impacts on the landowners due to the unauthorised activities already undertaken.

### 3.3 Infrastructure

The proposal will require a wastewater treatment system to be installed. There is no need for any road upgrades of Grays Lane as the proposal will generate minimal additional traffic movements. Water and electricity are adequate for this proposal. No additional state infrastructure is required.

## 4 Consultation

### 4.1 Community

The planning proposal is categorised as a standard under the LEP Making Guidelines (August 2023). A community consultation period of 20 working days is recommended and this forms part of the conditions to the Gateway determination.

### 4.2 Agencies

It is recommended that consultation be undertaken with:

- NSW Rural Fire Service

- Tweed Byron LALC
- Arakwal Corporation
- NSW State Emergency Service
- Department of Climate Change, Energy, the Environment and Water (Biodiversity Conservation and Science).

All agencies should be given 30 working days to comment. A condition to this effect has been included in the Gateway determination.

## 5 Timeframe

The LEP Plan Making Guidelines (August 2023) establishes maximum benchmark timeframes for planning proposal by category. This planning proposal is categorised as standard.

A LEP completion timeframe of nine months is recommended consistent with the Department's commitment to reducing processing times and with regard to the benchmark timeframes. A condition to this effect is recommended in the Gateway determination.

## 6 Local plan-making authority

Council has advised that it would like to exercise its functions as a Local Plan-Making authority.

As the planning proposal is of local significance and is generally consistent with the State, regional and local planning framework, it is recommended that Council be authorised to be the local plan-making authority for this proposal.

## 7 Recommendation

It is recommended the delegate of the Secretary:

- Agree that inconsistencies with Section 9.1 Directions 4.5 Acid Sulfate Soils and 9.2 Rural Lands are of minor significance; and
- Note that the consistency with Directions 1.1 Implementation of Regional Plans, 3.1 Conservation Zones, 3.2 Heritage Conservation, 4.1 Flooding, 4.2 Coastal Management and 4.3 Planning for Bushfire Protection is unresolved and will require justification.

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions.

1. Prior to agency and community consultation the planning proposal is to be updated to include
  - a completed NSW Coastal Design Guidelines 2023 assessment checklist;
  - detail about the PMF flood level, hazard, inundation times and access to critical services during flood events; and
  - if shelter-in-place forms part of the proposed management response then include an assessment against the Shelter-in-Place guideline for flash floods (released January 2025).
2. The planning proposal be publicly exhibited for a minimum of 20 working days.
3. Consultation is required with the following public authorities/organisations:
  - NSW RFS
  - Tweed Byron LALC
  - Arakwal Corporation
  - NSW SES
  - NSW DCCEW

4. Council be the local plan-making authority and that the LEP be completed within 9 months from the date of the Gateway determination.



24 January 2025

Ben Holmes

Manager, Hunter and Northern NSW



28/1/25

\_\_\_\_\_  
(Signature)

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